

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

ROSS D. LEVAY,

Plaintiff,

v.

DAVID MORKEN, *et al.*,

Defendants.

Case No. 1:20-cv-13146

Honorable Thomas L. Ludington  
United States District Judge

Honorable Patricia T. Morris  
United States Magistrate Judge

---

**ORDER DIRECTING DEFENDANTS TO RESPOND TO PLAINTIFF’S MOTION**

On November 29, 2021, Plaintiff Ross D. LeVay filed a *pro se* complaint against Defendants David Morken; Bandwidth.com CLEC., LLC; and Bandwidth Inc., alleging failure to comply with law enforcement regarding communication assistance, 18 U.S.C. § 2522 (“CALEA”); aiding and abetting stalking, *id.* §§ 2, 2261A; interstate communication threats, *id.* § 875; malicious use of service, MICH. COMP. LAWS § 750.540e; gross negligence; intentional and negligent infliction of emotional distress; concealment; and civil-rights violations, 42 U.S.C. § 1983. ECF No. 1.

In December 2020, the case was referred to Magistrate Judge Patricia T. Morris for all pretrial matters. ECF No. 5. In January 2021, Judge Morris issued a report recommending that this Court dismiss the Complaint *sua sponte*. ECF No. 7. Later that month, Plaintiff objected to the Report and Recommendation (“R&R”). ECF No. 11. The next month, this Court adopted the R&R, overruled Plaintiff’s objections, and dismissed the case. ECF No. 12. One month later, Plaintiff appealed the dismissal. ECF No. 14.

In November 2021, the Sixth Circuit Court of Appeals affirmed in part, vacated in part, and remanded the case regarding the dismissal of Plaintiff’s CALEA and state-law claims. ECF

No. 18. The Sixth Circuit explained that even though CALEA might not “provide[] a private right of action, it cannot be said that [Plaintiff’s] complaint failed to allege facts that could support a [CALEA] claim.” *Id.* at PageID.96. The Sixth Circuit elaborated that this Court improperly dismissed the CALEA claim because, “[t]hough the allegations are confusing,” the Complaint “lays out” “many more allegations . . . in fairly elaborate, if somewhat confounding detail.” *Id.*

In other words, the Sixth Circuit held that a complaint alleging “confounding” and “confusing” facts can state a claim under a statute that might not create a private right of action if it “lays out” the facts in “fairly elaborate” detail. *See id.*; *LeVay v. Morken*, No. 21-1257 (6th Cir. Nov. 15, 2021) (unpublished).

On December 16, 2021, this Court reopened the case and referred it to Judge Morris again for general case management. ECF No. 20. Twenty-six days after Judge Morris scheduled the first conference, Plaintiff filed a motion to disqualify the undersigned, Judge Morris, and District Judge Laurie J. Michelson from this case under both 28 U.S.C. § 144 and 485. *See* ECF No. 22. To address the motion, this Court vacated ECF No. 20, an order referring the case to Judge Morris. *See* ECF No. 25. Thus, the case is back before the undersigned.

Defendants have not yet addressed Plaintiff’s Motion to Disqualify. For that reason and to ensure the Motion is fully briefed on the merits, Defendants will be directed to respond to Plaintiff’s Motion to Disqualify.

Accordingly, it is **ORDERED** that Defendants are **DIRECTED** to respond to Plaintiff’s Motion to Disqualify, ECF No. 22. Defendants must file their respective briefs, which may be no longer than 20 pages, **on before March 7, 2022**.

Dated: February 24, 2022

s/Thomas L. Ludington  
THOMAS L. LUDINGTON  
United States District Judge